

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Ernest Stuart Brock, [REDACTED]

Case No. 04-08646-W
Chapter 7

FILED

at [REDACTED] O'clock & [REDACTED] min. M

OCT 13 2004

Debtors.

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina

ORDER SUSPENDING COUNSEL

JURISDICTION

ENTERED

OCT 13 2004

K E P.

This proceeding comes before the Court on an Order and Rule to Show Cause (the Rule) issued on September 10, 2004. The Rule required Alan B. Rogers, a member of the bar of this Court, to appear before the Court and to show cause why he should not be sanctioned for filing this joint bankruptcy case without first obtaining the permission of [REDACTED] Mr. Rogers filed the case using the Court's CM/ECF case management system. Mr. Rogers appeared before the Court, but he did not file a response to the Rule. The Court did not receive any objections or responses to the Rule.

Simultaneously with the Rule the Court heard a motion by the debtor Ernest Stuart Brock, through new counsel, to have [REDACTED] his spouse, removed as a joint debtor in this case. Mr. Brock also sought to have the record expunged as to [REDACTED] This Court has issued a separate order granting Mr. Brock's motion.

The Court has jurisdiction of this proceeding pursuant to 28 U.S.C. §§ 157, 1334, and Local Civil Rule 83.IX.01 DSC. This matter is a core proceeding. 28 U.S.C. § 157(b)(2)(A). Appropriate venue of this case and this proceeding resides in the District of South Carolina. 28 U.S.C. §§ 1408-1409.

FACTS

Ernest Stuart Brock signed a retainer agreement with Alan B. Rogers, Esquire, and the Wilkerson and Lewis, LLC, law firm on February 12, 2003. Mr. Brock retained Mr. Rogers and the firm to file a joint chapter 7 petition for Mr. Brock and [REDACTED] [REDACTED] however, did not participate in the discussions with Mr. Rogers. Mr. Brock and Mr. Rogers subsequently agreed that due to her relatively good credit, the small number of her creditors, and a lack of joint indebtedness with Mr. Brock, that [REDACTED] should not file for bankruptcy relief. Shortly after signing the retainer agreement, Mr. Brock supplied information to Mr. Rogers to complete the petition, schedules, and statement of affairs. Mr. Brock paid Mr. Rogers the sum of \$959.00, to file the bankruptcy case, which included the filing fee of \$209.00.

Seventeen months after Mr. Brock retained Mr. Rogers, this Court received a joint chapter 7 bankruptcy petition on July 23, 2004, in the names of Ernest Stuart Brock and [REDACTED] [REDACTED] filed electronically through the Court's CM/ECF case management system. Mr. Rogers, a member of this Court's bar and a CM/ECF trained participant, electronically filed the joint petition, schedules, statement of affairs, and Form SSN 21 (reflecting the Brock [REDACTED] Social Security numbers) with the petition showing the "/s/" electronic signature for the Brock [REDACTED] a total of six times. The Brock [REDACTED] signatures were consistently dated July 1, 2004.

On August 2, 2004, the Clerk's Office notified Mr. Rogers that the Brock had not filed a Declaration of Electronic Filing showing their handwritten signatures and stating their intent to file a joint electronic bankruptcy petition as required by Operating Order 02-08(II)(C)(2).

never saw, reviewed, approved, or signed the petition, schedules, Form 21 SSN, or the statement of affairs filed in her name by Mr. Rogers. never met with Mr. Rogers, although she knew that her husband intended to file for bankruptcy relief. As a result of the unauthorized bankruptcy filing in name, encountered problems in maintaining and obtaining personal credit in name. Mr. Brock never reviewed the documents completed by Mr. Rogers before they were "signed" and filed with the Court.

The documents filed by Mr. Rogers in this case and unseen by the Brock contain four oaths by the Brock under penalty of perjury purportedly electronically signed by the Brock. The documents also contain a standard declaration electronically signed by counsel stating that he had informed the Brock that they could proceed under chapter 7, 11, 12, or 13 of Title 11 U.S.C.

On August 19, 2004, F. Lee O'Steen, Esquire, filed a Declaration of Electronic Filing on behalf of Mr. Brock only. This Court approved Mr. O'Steen as substitute counsel for Mr. Brock by order entered August 20, 2004. On September 7, 2004, Mr. O'Steen filed the present motion to have removed as a debtor in this case.

On September 10, 2004, the Court issued an order and rule requiring Mr. Rogers to appear and to show cause why he should not be sanctioned for filing the joint case showing as debtor and for conducting himself in the manner alleged by Mr. Brock. Mr. Rogers appeared at the rule hearing which was conducted simultaneously with the hearing on Mr.

Brock's motion for expungement. Mr. Rogers admitted that he had filed the case for [REDACTED] in error. He did not dispute the facts as alleged by Mr. Brock. He did not offer an explanation for his conduct in this case. He informed the Court that he no longer intended to practice law.

THE LAW

The electronic document filing system now used by federal courts is called the Case Management/Electronic Case Filing System (CM/ECF). Fed. R. Bankr. P. 5005(a)(2) provides that a document filed with the Court by electronic means "constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code." "A case filed electronically is no different from a paper case filed in person at the counter." *In re Wenk*, 296 B.R. 719, 724 (Bankr. E.D. Va. 2002). The same rules and procedures applying to paper cases filed over the counter apply to electronically filed cases and documents.

Fed. R. Bankr. P. 1008 requires that all petitions, lists, schedules, statements and any amendments to these documents be verified by the filing party or contain an unsworn declaration in the form permitted by 28 U.S.C. § 1746. Form 1 Voluntary Petition, Form 6 Schedules, Form 7 Statement of Affairs, Form 8 Statement of Intention, and Form 21 SSN, all filed in this case, require the filing debtor's original signature a total of six times, four times in the form of an oath or unsworn declaration. SC LR 5005-1, CI 5005-1, and Operating Order 02-08(II)(C) Electronic Filing Procedures require an attorney when filing documents electronically to possess the original signature of a debtor on documents for which a signature is required. Further, Operating Order 02-08(II)(C)(3) states in relevant part:

The original signed document shall be maintained by the attorney of record or the party originating the document until the case or adversary proceeding is closed and all maximum allowable times for appeals in that case or adversary proceeding have expired, and the time within which a discharge of the debtor may be revoked have passed. Upon written request, the original document must be provided to other parties or the Court for review. The pleading or other document electronically filed shall indicate a signature (e.g., /s/ Jane Doe).

The typewritten name of a person whose signature appears in electronic format constitutes that person's actual signature for all purposes under the Fed. R. Bankr. P. The filing of a document by a CM/ECF participant constitutes a representation to this Court that the filer has secured an originally executed document actually signed by the filing party *before* the document is filed with the Court. The requirement of an original signature prior to filing electronically is the same rule that applies to documents not filed electronically. No statute or rule waives this requirement. *See Wenk, supra; In re Phillips*, 306 B.R. 655 (Bankr. E.D. Mo. 2004); Fed. R. Bankr. P. 5005(a)(2); SC LR 5005-1; CI 5005-1; and Operating Order 02-08(II)(C) Electronic Filing Procedures.

In this case, Mr. Rogers filed several documents with the Court containing the electronic signature of the Brock [REDACTED] without having first obtained the original signature of Mr. Brock and without having any authority to file documents on behalf [REDACTED]

The Court cannot tell based on the record before it the motivation or reasons for Mr. Rogers' actions. Regardless of the basis for his conduct [REDACTED] has been unnecessarily and significantly harmed by his actions. The Court must address Mr. Rogers' conduct as a member of the bar of this Court.

This Court has the inherent authority to address the conduct of members of the bar and litigants before it and to address improper conduct by each. 11 U.S.C. § 105, Fed. R. Bankr. P. 9011, 28 U.S.C. § 1927, *In re Weiss*, 111 F.3d 1159 (4th Cir. 1997). The South Carolina Rules of Professional Conduct SCACR 407 govern the conduct of attorneys practicing before this Court. See Local Civil Rules 83.I.08, 83.IX.01 DSC.

The Court concludes that Mr. Rogers' conduct in this case falls below the minimum professional standard of conduct required to practice bankruptcy law before the Court. Mr. Rogers violated SCACR 407 by:

1. failing to act with reasonable diligence and promptness in representing a client (unreasonable delay in filing case) - Rule 1.3 Diligence;
2. failing to keep a client reasonably informed about the status of a matter (unreasonable delay in filing case) - Rule 1.4 Communication;
3. failing to abide by a client's decision concerning the objectives of the representation (filing for [REDACTED] without authority) - Rule 1.2 Scope of Representation;
4. failing to provide competent representation to a client (Mr. Brock - filing for spouse without authority) - Rule 1.1 Competence;
5. charging a client (Mr. Brock) an unreasonable fee based upon the services (or lack thereof) provided - Rule 1.5 Fees; and
6. knowingly making false statements of material fact to a tribunal (failing to obtain the original signature of Mr. Brock; filing a bankruptcy petition for [REDACTED] when he had never consulted with [REDACTED] and, presenting signed oaths to the Court by parties who had never seen or signed the oaths) - Rule 3.3 Candor Toward the Tribunal.

The Court concludes that the payment of \$750.00 (excludes the filing fee) to Mr. Rogers exceeds the reasonable value of the services provided to Mr. Brock. § 329; Fed. R. Bankr. P.

2017. Mr. Rogers shall refund \$750.00 to Mr. Brock within twenty days after the entry of this order.

Further, the Court concludes that the filing of the case to include [REDACTED] clearly violates Fed. R. Bankr. P. 9011 in that Mr. Rogers certified to this Court by filing the petition that to the best of his knowledge, information, and belief, and based on a reasonable inquiry under the circumstances that [REDACTED] desired to file a bankruptcy petition.

The Court concludes that Mr. Rogers' conduct in this matter justifies his immediate suspension from practicing before this Court until further order of the Court. Mr. Rogers may petition the Court for reinstatement after a period of six months from the entry date of this order at which time the Court will conduct a hearing to consider reinstatement. Notice of that hearing will be provided to the United States Trustee and to such other parties as the Court deems appropriate.

AND IT IS SO ORDERED.

Columbia, South Carolina
October 13, 2004


UNITED STATES BANKRUPTCY JUDGE